



3743
Baw

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Bernadette Jestrabek-Hart

Confirmation No. 9870

Application Number: 10/601,917

Filed: 06-19-2003

For: **Orthopedic Device Allows Kneeling without Contact to the Knee and Protects**

Other Joints

Group Art Unit: 3743

Examiner: Amanda F. Wicker (nee Amanda R. Flynn)

Agent Docket No.: 3063

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

Responsive to the Office Action mailed October 19, 2004, please consider the following.

Claims 1-20 are in the application. Claims 1, 12 and 14 are in independent form. The claims stand subject to restriction under 35 USC §121. The Examiner requires restriction to one of the following species:

Species A, as shown in Figure 1A;

Species B, as shown in Figure 6A; or

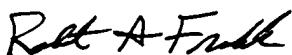
Species C, as shown in Figure 6C.

Applicant provisionally elects, with traverse, to prosecute Species A. Applicant identifies claims 1-8 and 14 as generic claims. In addition to the generic claims, Applicant identifies independent claim 12, and dependent claims 9, 13 and 15-16 as relating to Species A. Therefore, in summary, Applicant requests consideration for claims 1-9 and 12-16 as being relevant to the election.

Applicant respectfully traverses the Examiner's restriction requirement for the reasons discussed herein. The Examiner's division into Species A-C is based entirely on a selection of Figures without reference to claims. Based upon this, Applicant infers that the restriction is made in an attempt to separately classify the Applicant's single inventive concept into three distinct embodiments based upon its usage related to three regions of the human body. Applicant contends that since the apparatus of Species B is merely a scaled-down version of Species A, and the apparatus of Species C amounts to a larger version of Species A, restriction to a single species would leave the Applicant with no protection for alternate uses of the claimed apparatus of the invention when restricted to Species A.

Furthermore, Applicant notes that the Examiner has not identified preliminary classifications for Species A, B and C as being distinctly different each from the others. Also, Applicant has herein identified nine of the 20 claims as generic, and points out that only six of the 20 claims do not relate to Species A. Therefore, Applicant contends that the additional effort to examine Species B and C in addition to the elected Species A should not present an excessive burden to the Examiner.

Respectfully submitted,



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This correspondence includes:

Response to Restriction Requirement (two pages); and
postcard.

CERTIFICATE OF MAILING (37 CFR §1.8)

I hereby certify that this correspondence, and attachments, if any, is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450" on the date below.

Date: Nov. 5, 2004

Person Mailing Correspondence: Robert A. Frohwerk,
Registered Patent Agent #51707

Signature: Robert A. Frohwerk